



DEPARTMENT OF VETERANS AFFAIRS

8320-1

38 CFR Part 21

RIN 2900–AO10

Vocational Rehabilitation and Employment Program—Changes to Subsistence Allowance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as final, without change, the interim final rule amending regulations of the Department of Veterans Affairs (VA) to reflect changes made by the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, effective August 1, 2011, that affect payment of vocational rehabilitation benefits for certain service-disabled veterans. Pursuant to these changes, a veteran, who is eligible for a subsistence allowance under chapter 31 of title 38, United States Code, and educational assistance under chapter 33 of title 38, United States Code, may participate in a rehabilitation program under chapter 31 and elect to receive a payment equal in amount to an applicable military housing allowance payable under title 37, United States Code, instead of the regular subsistence allowance under chapter 31. In addition, payments of subsistence allowances during periods between school terms are discontinued, and payments during periods of temporary school closings are modified.

DATES: Effective Date: This final rule is effective [Insert date of publication in FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 461-9600 (not a toll-free number).

SUPPLEMENTARY INFORMATION: In an interim final rule published in the FEDERAL REGISTER on August 1, 2011 (76 FR 45697), VA amended §§ 21.260 and 21.264 to allow a veteran who is eligible for a chapter 31 subsistence allowance and chapter 33 educational assistance to participate in a chapter 31 rehabilitation program and elect a subsistence allowance in an alternate amount, which we referred to as the Post-9/11 subsistence allowance, in lieu of the amount of the regular chapter 31 subsistence allowance provided for in § 21.260(b). Among other things, we also amended § 21.270 to discontinue the payment of subsistence allowance for periods between school terms.

We provided a 30-day comment period that ended August 31, 2011. No comments were received. Based on the rationale set forth in the interim final rule, we adopt the interim final rule as a final rule without change.

Administrative Procedure Act

This document affirms the amendments made by the interim final rule that is already in effect. The Secretary of Veterans Affairs concluded that, under 5 U.S.C. 553(b)(3)(B) and (d)(3), there was good cause to dispense with advance public notice and opportunity to comment on this rule and good cause to publish the interim final rule

with an immediate effective date. The Secretary found that it was impracticable and contrary to the public interest to delay this regulation for the purpose of soliciting prior public comment. Sections 205 and 206 of Pub. L. 111-377 required that certain changes to the rehabilitation program take effect on August 1, 2011. This interim final rule was necessary to implement by August 1, 2011, the statutory changes as they related to chapter 31 subsistence allowance. For instance, Pub. L. 111-377 did not address how the alternate rate of subsistence allowance would be calculated in different situations. Allowing veterans to elect an alternate rate of subsistence allowance ensured that such veterans would receive the supportive services under chapter 31 to assist them in the transition from military to civilian careers. Because eligible veterans could begin to make the election on August 1, 2011, it was important to have procedures in place by this date to allow veterans to receive the alternate rate of subsistence allowance authorized under the law as soon as they were able. For these reasons, the Secretary of Veterans Affairs issued this rule as an interim final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule does not contain any collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This regulatory action will affect individuals and will not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or

more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined to be a significant regulatory action under Executive Order 12866.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program that would be affected by this final rule is 64.116, Vocational Rehabilitation for Disabled Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 1, 2011 for publication.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Dated: January 9, 2012

Robert C. McFetridge,
Director, Regulation Policy and Management,
Office of the General Counsel
Department of Veterans Affairs

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Accordingly, the interim final rule amending 38 CFR part 21, which was published at 76 FR 45697 on August 1, 2011, is adopted as a final rule without change.

[FR Doc. 2012-452 Filed 01/11/2012 at 8:45 am; Publication Date: 01/12/2012]